

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DOMENICO DE SOLE, <i>et al.</i> , Plaintiffs, v. KNOEDLER GALLERY, LLC, <i>et al.</i> , Defendants.	:
JOHN D. HOWARD, Plaintiff, v. ANN FREEDMAN, <i>et al.</i> , Defendants.	: 12 Civ. 2313 (PGG) 12 Civ. 5263 (PGG) 13 Civ. 657 (PGG) 13 Civ. 3011 (PGG) 13 Civ. 1193 (PGG)
THE MARTIN HILTI FAMILY TRUST, Plaintiff, v. KNOEDLER GALLERY, LLC, <i>et al.</i> , Defendants.	: <u>AFFIRMATION</u>
THE ARTHUR TAUBMAN TRUST, <i>et al.</i> , Plaintiffs, v. KNOEDLER GALLERY, LLC, <i>et al.</i> , Defendants.	:
FRANCES HAMILTON WHITE, Plaintiff, v. ANN FREEDMAN, <i>et al.</i> , Defendants.	:
UNITED STATES OF AMERICA, Plaintiff-Intervenor.	:
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STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

JASON P. HERNANDEZ, pursuant to 28 U.S.C. Section 1746, hereby affirms
the following:

1. I am an Assistant United States Attorney in the Criminal Division of the Office of

Preet Bharara, United States Attorney for the Southern District of New York. I make this affirmation in support of the application of the Government for a stay of the above-captioned cases (the “Civil Cases”) until December 13, 2013, which may be extended upon a showing of good cause.

2. Since in or about 2009, the United States Attorney’s Office in this District has been conducting a criminal investigation related to the allegations in the Civil Cases. On May 21, 2013, Glafira Rosales, a defendant in the Civil Cases, was arrested and charged with various federal income tax offenses which bear on the subject matter of the Civil Cases. On July 17, 2013, Rosales was indicted by a Grand Jury in this District and on August 14, 2013, a superseding Indictment was returned against Rosales. The Superseding Indictment, filed under case number S1 13 Cr. 518 (KPF), alleges, among other things, that the artworks (the “Works”) that are the subject of the Civil Cases are fake, that the Works were created by a painter who resides in Queens, that the purported provenance for the Works is false, and that Rosales knew that the Works were fake when she consigned them to Knoedler Gallery, LLC.

3. I have had discussions about the Government’s proposed stay with counsel for all of the parties to the Civil Cases or with Emily Reisbaum, Esq., counsel to the De Sole plaintiffs, who has been authorized to discuss the stay with me on behalf of the plaintiffs. With two exceptions, all of the parties to the Civil Cases have told me that they have no objection to a stay of the Civil Cases through December 13, 2013, with a possible extension of the stay upon a showing to this Court of good cause. The first exception is that one or more of the defendants, including but not limited to defendants Knoedler Gallery, LLC, 8-31 Holdings, Inc., and Michael Hammer, represented by Charles Schmerler, Esq. and Andrius Kontrimas, Esq., may petition this Court to carve-out certain fully briefed motions to dismiss from the proposed stay. The

Government takes no position on the proposed carve-out. The proposed stay does not, however, propose any carve-out. The second exception is that Silvia Serpe, Esq., counsel for defendant Jaime Andrade has informed the Government that Mr. Andrade will be out of the country until approximately September 8th or 9th. Ms. Serpe has not been able to communicate with Mr. Andrade while he has been out of the country, so she is unable to take a position on the proposed stay until Mr. Andrade returns to the United States. Ms. Serpe has informed the Government that she will inform the Court of Mr. Andrade's position on the stay as soon as possible.

4. Based on my involvement in the criminal investigation and prosecution to date, I have learned that there are several witnesses who have information that is highly relevant to both the Civil Cases and the ongoing criminal case. I believe that the disclosure of the testimony of these witnesses—whether by way of a civil disposition or a civil trial—could severely impair the ongoing criminal case. For example, such witnesses may be forced to testify about any efforts to assist the criminal investigation, and may thereby expose facts about the investigation that would otherwise not be disclosed far in advance of a criminal trial and, at worst, could lead to the fabrication or destruction of evidence by others prior to a criminal trial. Additionally, providing a preview of these witnesses' testimony and then subjecting them to cross-examination in a civil proceeding could severely undermine their usefulness at any future criminal trial.

5. I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
September 9, 2013

s/ Jason P. Hernandez
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